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In The

Supreme Court of the United States

October Term, 1989

DOUBLETREE, A Wyoming Corporation, ROGER K. BOWER, ALDEN INSURANCE AGENCY, A Wyoming Corporation, and LARRY R. ALDEN,

Petitioners,

v.

WILLIAM D. HAGER, Commissioner of Insurance of the State of Iowa, as Liquidator of Iowa National Mutual Insurance Company

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Iowa

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

ARE THE PETITIONERS, AND EACH OF THEM, SUBJECT TO *IN PERSONAM* JURISDICTION IN IOWA IN THESE ACTIONS?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 6

A. SUMMARY 6

B. THE FACIAL CHALLENGE HAS NO MERIT 6

C. APPLICABLE LAW IS SETTLED 7

D. THE COURT BELOW CORRECTLY APPLIED THE LAW TO THE FACTS 7

E. THERE IS NO CONFLICT IN THE DECISIONS 11

CONCLUSION 12

TABLE OF AUTHORITIES

Page

CASES

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 7, 8, 9, 10

Hager v. Anderson-Hutchinson Insurance Agency, et al., Civil No. 86-841-E (S.D. Iowa, rulings and orders filed June 6, 1986, April 22, 1987, and July 19, 1989) 12

Hanson v. Denckla, 357 U.S. 235 (1958) 7

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 7

Matter of All-Star Insurance Corp., 327 N.W.2d 648 (Wis.), *appeal dismissed for want of a substantial federal question*, 461 U.S. 951 (1983) 4, 5, 11

McGee v. International Life Ins. Co., 355 U.S. 220 (1958) 7

State ex rel. Hager v. Iowa Nat. Mut. Ins. Co., 430 N.W.2d 420 (Iowa 1988) 4

Travelers Health Assn. v. Virginia, 339 U.S. 643 (1950) 7

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 7, 10, 11

STATUTES

Iowa Code Chapter 507C (1985) 2

§ 507C.1(4)(c) and (e) 4

§ 507C.4(3)(a) 3, 6, 10

§ 507C.4(5) 3

§ 507C.21(1)(f) 2, 3

TABLE OF AUTHORITIES – Continued

Page

§ 507C.33(1)(a) 2

§ 507C.42 2

§ 507C.52(1) 4

11 U.S.C. § 109(b)(2) (1982) 1

Wis. Stats. Ann. § 645.04(5) (1977) 4

Wyo. Stat. § 26-28-113(b) (1977) 5

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Respondent is in substantial agreement with petitioners' statement of the case. He wishes to expand only on the following points.

Domestic insurers are exempt from Chapter 7 of the Federal Bankruptcy Act. 11 U.S.C. § 109(b)(2) (1982).

Accordingly, the liquidation of insolvent insurers is handled in the state courts pursuant to state statutes, in this case Iowa's Insurers Supervision, Rehabilitation and Liquidation Act, Chapter 507C of the Iowa Code (1985) ("the Act").

Iowa National Mutual Insurance Company was a property and casualty insurer domiciled in Iowa. Its liquidation is now proceeding, pursuant to Chapter 507C, under the supervision of the Iowa District Court for Polk County. Respondent Hager, Iowa's Commissioner of Insurance and Iowa National's statutory liquidator, is charged with collecting all "debts and monies due and claims belonging to the insurer, wherever located," § 507C.21(1)(f), for distribution to rightful claimants in accordance with their statutory priorities, § 507C.42.

Among those by whom money is owed are Iowa National's former agents, of which there were 1,360 scattered throughout 15 states when the company was ordered liquidated.

The agents all did business with Iowa National pursuant to a standard Company-Agency Agreement. They were responsible (among other things) for the collection of *premium* due on Iowa National policies sold by them, and for payment of the premium, less commission, directly to Iowa National's home office in Cedar Rapids, Iowa. In case of policy cancellation or premium reduction, the agents were also required to refund to Iowa National the resulting "return" or *unearned commission*.

Section 507C.33(1)(a) of the Act provides in part that:

> An agent, broker, premium finance company or any other person responsible for the payment of

> a premium is obligated to pay an *unpaid premium* for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from the person any part of an unearned premium that represents *commission* of the person. [Emphasis added].

At the outset, $31.7 million in unpaid premium and unearned commission was owed by Iowa National's agents under this statute.[1] The liquidator is specifically empowered to sue to collect these monies, § 507C.21(1)(f) and (l), in the Iowa District Court for Polk County, § 507C.4(5); and personal jurisdiction over agents thus sued, assuming proper service, is specifically authorized by statute, § 507C.4(3)(a).

In the case of agencies organized as corporations, Iowa National frequently required, as a condition of appointment and as part of the Company-Agency Agreement, that the agencies' principals personally guarantee "the full and faithful performance" of the agencies' premium accounting and payment obligations. The personal guarantors thus also became responsible for the payment of premium to Iowa National. Section 507C.4(3)(a) again authorizes the Polk County Court to exercise jurisdiction over such persons in actions by the liquidator to collect unpaid premium and unearned commission due.

The jurisdictional and certain other provisions of the Act are part of a system of interrelated state statutes whose goals are twofold: to foster "cooperation between

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[1] As of this writing, agents balances still outstanding have been reduced to about $4.2 million.

states" in the liquidation of multi-state insurers; and to enhance the efficiency and economy of such liquidations. *Cf.* § 507C.1(4)(c) and (e) (purposes of the Act). Efficiency and economy result from concentrating in a single forum – the domiciliary liquidation court – as much as possible of the litigation affecting an insolvent insurer's estate. One can readily appreciate that suit against all agents, for example, in a single forum, is much more efficient and inexpensive than suit in all the counties in all the states where the agents may be found.

> "The connections between the insurer and the persons listed in this subsection [§ 507C.4(3)] are close enough that a statute giving such personal jurisdiction, for purposes of actions arising out of the relationship, satisfies the requirements of due process."

Matter of All-Star Insurance Corp., 327 N.W.2d 648, 653 (Wis.), *appeal dismissed for want of a substantial federal question*, 461 U.S. 951 (1983).[2] Cooperation between states is facilitated by reciprocity provisions in the several state statutes. As to agents balances in particular, § 507C.52(1) provides that:

> [T]he domiciliary liquidator of an insurer domiciled in a *reciprocol state* shall be vested with the title to the assets, property, contracts, and rights of action, *agents' balances*, books, accounts and other records of the insurer located in this state.

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[2] *Quoting* Committee Comment on the identical section of Wisconsin's Insurers Rehabilitation and Liquidation Act, Wis. Stats. Ann. § 645.04(5) (1977). Iowa's Act is derived from Wisconsin's, via model legislation drafted by the National Association of Insurance Commissioners. *See State ex rel. Hager v. Iowa Nat. Mut. Ins. Co.*, 430 N.W.2d 420, 422 (Iowa 1988).

> * * * The domiciliary liquidator may immediately recover *balances due from agents* . . . located in this state. [Emphasis added].

Many states, including Wyoming (where petitioners reside), have adopted the Uniform Insurers Liquidation Act, which contains an exactly parallel provision. *Cf.* Wyo. Stat. § 26-28-113(b) (1977). The more recent liquidation acts adopted in Iowa and about 13 other states are

> based substantially on the Uniform Insurers Liquidation Act which is integrated into [them], and "both modified and extended to assure more efficient regulation of interstate delinquency problems."

Matter of All-Star Insurance Corp., supra, 327 N.W.2d at 652 (again quoting Committee Comment). These interrelated state statutes demonstrate the shared policy of the several states to cooperate in the efficient and economical liquidation of multi-state insurers.

There is no need to belabor here the frequent and substantial contacts between petitioners and Iowa National's home office in Cedar Rapids, pursuant to the business they jointly did. These are well summarized in the opinion of the court below (App. 1-15). Respondent would only emphasize that the personal guarantors involved here – Messrs. Bower and Alden – were no mere passive bystanders: each was actively interested and involved as a shareholder, director, employee, and the president of his agency. Each signed his agency's agreement with Iowa National both as president and as personal guarantor.

REASONS FOR DENYING THE WRIT

A. Summary.

These cases involve straightforward application of settled law to their facts. Every court that has applied the law to similar facts has reached the same result. No novel issue is presented; no conflict in the decisions exists; the decision below was unquestionably correct. There are no "special [or] important" reasons why certiorari should be granted.

B. The Facial Challenge Has No Merit.

Although not advertised as such, nearly two pages of the Petition (pp. 9-10) are devoted to a sort of facial challenge to Iowa Code § 507C.4(3)(a). The argument is that the statute lays down a "mechanical" jurisdictional criterion and "override[s] the case-by-case analysis required in determining sufficient minimum contacts under the Fourteenth Amendment."

This challenge was considered and rejected by the court below (App. 3-5). The court construed § 507C.4(3)(a)

> as incorporating the requirements of "necessary minimum contact[s]" as embodied in [Iowa Rule of Civil Procedure] 56.2 thereby adopting the minimum contacts principles of *International Shoe*. We conclude that the statute when considered in this manner is facially valid.

(App. 4-5).

C. Applicable Law is Settled.

The cases turn on analysis of their facts under the principles articulated in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and

> further developed by the Supreme Court in later cases. *See, e.g., Burger King v. Rudzewicz*, [471 U.S. 462 (1985)]; *World-Wide Volkswagen Corp. v. Woodson*, [444 U.S. 286 (1980)]; *Hanson v. Denckla*, [357 U.S. 235 (1958)]; *McGee v. International Life Ins. Co.*, [355 U.S. 220 (1958)].

Opinion of the court below (App. 6).

McGee is particularly relevant, because like these cases it involved the business of insurance, which "the State treats as exceptional and subjects to special regulation." *Hanson v. Denckla, supra*, 357 U.S. at 252.

Burger King is also particularly relevant, because like these cases it involved commercial actors who

> "reach[ed] out beyond one state and create[d] continuing relationships and obligations with citizens of another state" . . . .

Burger King, supra, 471 U.S. at 473 (*quoting Travelers Health Assn. v. Virginia*, 339 U.S. 643, 647 (1950).

D. The Court Below Correctly Applied the Law to the Facts.

As the following analysis shows, the court below correctly concluded that each of the petitioners may constitutionally be held to answer in Iowa in these cases.

1. Nature, Quality, and Quantity of Contacts.

a. As in *Burger King*, the personal guarantors sued here (Bower and Alden) set up corporations through which to conduct their businesses. Nevertheless, Iowa National "insisted that [they] remain personally liable for their [agency] obligations." *Cf. Burger King*, 471 U.S. at 467 n. 6. Moreover, unlike the defendant in *Burger King*, Bower and Alden were active participants in the business of their agencies, *see* p. 5, *supra*. "[Bower and Alden] most certainly knew that [they were] affiliating [themselves] with an enterprise based primarily in [Iowa]." *Cf. Burger King*, 471 U.S. at 480; *and see* the findings of the trial court here:

> [Bower and Alden each] knew he was guaranteeing a contract between an insurance company located in Cedar Rapids, Iowa, and his own Wyoming agency;

each one

> realized such a personal guarantee was the key that allowed the corporate agency to do business with the Iowa corporation;

and each

> obviously realized that many of the acts necessary for the performance of that contract by necessity would take place in Iowa.

(App. 20-21, 28). Performance of the personal guarantees, if necessary, would take place in Iowa, by payment there; and failure of performance has its adverse effect in Iowa.

b. All petitioners were commercial actors who undertook interstate contractual obligations that created substantial connections between themselves and Iowa.

They "reach[ed] out beyond [Wyoming] and create[d] continuing relationships and obligations with [a] citizen of [Iowa]." Their business activities were "purposefully directed" toward a citizen of Iowa; they "purposefully derived benefit from their interstate activities." *Cf. Burger King*, 471 U.S. at 473 and 476.

c. The direct contact between petitioners and Iowa, incident to their agency agreements, was frequent and substantial. *See* decision of court below (App. 11-12). These contacts were far from "random", "fortuitous", or "attenuated". *Cf. Burger King*, 471 U.S. at 475.

d. Although petitioners' contacts with Iowa were apparently exclusively by telephone and mail,

> it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines;

and

> so long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.

Burger King, 471 U.S. at 476.

2. Nexus Between Contacts and These Suits. The monies sued for are unpaid premium and unearned commission owed precisely on account of petitioners' activities as agents of Iowa National. Their obligations to pay were assumed under the same contracts pursuant to which their many contacts with Iowa took place.

3. - Foreseeability of Suit in Iowa.

> [T]he foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there.

World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S. at 297. *Cf. Burger King,* 471 U.S. at 472:

> The "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, [citation], and the litigation results from alleged injuries that "arise out of or relate to" those activities. [Citation].

In view of the nature of petitioners' contacts with Iowa, from which this litigation directly arises, the fair warning requirement is satisfied here without more.

But there is more: there is § 507C.4(3)(a) of the Iowa Code, which authorizes personal jurisdiction in Iowa in suits like these, over persons who are

> obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker.

This statute was enacted in 1984. Petitioners were then on explicit notice of their liability to suit in Iowa in just such proceedings as these. They continued in their agency relationships with Iowa National thereafter. They can hardly now complain that they did nothing that would reasonably require them to anticipate being haled into the Iowa courts in the event of Iowa National's liquidation.

4. Iowa's Interest in Providing a Forum for these Suits; Interest of Other States and of the Interstate Judicial System. Iowa's strong interest in providing a forum for these suits, and for the many others like them, is manifest. But so is

> the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several states in furthering fundamental social policies.

World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S. at 292. Furtherance of these interests is among the explicit purposes of Iowa Code Chapter 507C and of the related insurer liquidation legislation adopted elsewhere. *See* pp. 3-5, *supra.* These matters are well discussed in the decision below (App. 14-15), and in *Matter of All-Star Insurance Corp., supra,* 327 N.W.2d at 651-654.

5. Convenience of the Parties. This factor again weighs in favor of Iowa as the forum for these suits. *See* the decision below (App. 15).

6. Conclusion. The decision below was correct on its merits.

E. There is No Conflict in the Decisions.

Petitioners have not been able to point to a single case that is in conflict either directly or in principle with the decision below.

On the other hand, the decisions of two other courts directly support the decision below.

1. In *Matter of All-Star Insurance Corp., supra,* 327 N.W.2d 648, Illinois and Louisiana agents of an insolvent

Wisconsin insurer were held suable in Wisconsin for unpaid premium and unearned commission owed the Wisconsin liquidator. The subsequent appeal to this Court was dismissed for want of a substantial federal question, 461 U.S. 951 (1983).

2. In *Hager v. Anderson-Hutchinson Insurance Agency, et al.*, Civil No. 86-841-E (S.D. Iowa, rulings and orders filed June 6, 1986, April 22, 1987, and July 19, 1989), Missouri and Wisconsin agents of Iowa National itself, and their personal guarantors, have been held suable in Iowa for unpaid premium and unearned commission owed Iowa National's liquidator, the Respondent here.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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